Cf 102 Single Bench (1) (3)

BEFORE THE HON'BLE HIGH COURT OF JUDICATURE

IN THE MATTER OF W.P. No. 4118/2004

PETITIONER: M/S MODERN ENGINEERS, THROUGH THE PARTNER, SHRI VINOD LATH, S/O SHRI SITARAM LATH, AGED ABOUT 40 YEARS, (HEAD OFFICE MODERN ENGINEERS- KORBA) MAIN RAOD, PURULIA, WEST BENGAL,

VERSUS

RESPONDENTS:

1. THE EMPLOYEES' PROVIDENT FUND ORGANIZATION, MINISTRY OF LABOUR, GOVT. OF INDIA THROUGH THE REGIONAL PROVIDENT FUND COMMISSIONER, REGIONAL OFFICE, RAIPUR (C.G.)

2. THE ASSISTANT PROVIDENT FUND COMMISSIONER & QUASI JUDICIAL AUTHORITY UNDER SECTION 7-A OF EMPLOYEES PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT 1952, REGIONAL OFFICE, RAIPUR [C.G.]

P.R. No. 4442/04 Presented by Shri A.K. Dwivedi dated 7-7-04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT/ORDER OR DIRECTION AS DEEMED FIT

(25)

HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH.

Writ Petition No.4066 /2004

M/s Priya Paper Works

- Versus-

The Employees' Provident Fund Organisation & another

Writ Petition No.4448/2004

M/s. Modern Engineers

-Versus-

The Employees Provident Fund Organization and Another

Writ Petition No.4451/2004

M/s. Ankit Steels (Steel Re-rolling Mill)

-Versus-

The Employees Provident Fund Organization and Others

Writ Petition No.4473/2004

M/s. Sangam Forgings (P) Ltd.

-Versus-

The Employees Provident Fund Organization and Others

Writ Petition No.4478/2004

M/s. Vineet Singh Construction Co. Pvt. Ltd.

-Versus-

The Employees Provident Fund Organization and Another

Writ Petition No.4630 / 2004

M/s. Raipur Lamps (P) Ltd.

-Versus-

The Employees Provident Fund Organization and Others

Appearance :

Petitioners by Ms. Sunita Jain and Shri Ajay Dwivedi, Advocates.

Sunil Kumar Sinha, J.

O R D E R

(02-02-2005)

Since all the writ petitions referred to above have been filed for almost a similar relief and are based on similar grounds of identical nature, they are being disposed of by this common order.

2). In fact, in all these identical petitions, a common question is involved as to whether the petitioners can be afforded an opportunity to file a representation before the concerned authority i.e.Regional Provident Fund Commissioner & Quasi Judicial Authority Under Section 7-A of the Employees Provident Funds & Miscellaneous Provisions Act 1952, Regional Office Raipur, after a final decision under Section 7-A of the said Act.

3). The case of the petitioners is that proceedings under Section 7-A of The Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") were drawn against them for determination of money due from them (Employers). In the said proceedings, the aforesaid authority passed separate orders which are impugned in each of the petition. The petitioners have challenged the legality, validity and propriety of the said orders by filing these writ petitions under Article 226 /227 of the Constitution of India. The legality of the orders has been challenged by the petitioners saying that the authority has not adopted proper procedure and the grounds for assessment and also for determination of the outstanding amount are not proper.

4). Learned counsel for the petitioners argues that in another petition bearing W.P. No. 2331/2004, this Court has passed an order dated 20/09/2004 by which a direction was issued to the petitioner of the said case that he would file a detailed representation raising grievances before respondent No.2 of the said petition (authority under Section 7 –A of the Act)/ competent authority along with a copy of the petition and order within ten days and on such representation being filed, the competent authority shall decide the same by a reasoned

order on its own merits in accordance with law as early as possible preferably within four weeks from the date of receipt of the representation. They further submit that similar directions be issued in each of the writ petition and accordingly the petitioners may be permitted to file representations before the competent authority and the competent authority may be directed to decide the same in terms of the order of this Court passed in the aforesaid writ petition.

5). A copy of the order passed in W.P. No. 2331/2004 has also been placed on record.

6). Now the question arises before this Court is as to whether the order passed by the competent authority under Section 7 –A of the Act should be quashed by this Court and/or a direction for filing the representation as given in W.P. No. 2331/2004 can be issued straightway to the petitioners and the petitions should be disposed of on the said terms.

7). I have heard learned counsel for the petitioner and also perused the records of the writ petitions.

8). The scheme of the Act is required to be analyzed here in these cases. Admittedly, the competent authority has got jurisdiction to determine the money due from the employers and proceedings under Section 7-A of the Act can be initiated by the competent authority. The method of determination has also been provided in the aforesaid section. Section 7-B of the Act deals with review of orders passed under Section 7-A. Thereafter, the provision of Section 7-C of the Act deals with determination of escaped amount and Section 7-D of the Act deals with constitution of the Employees' Provident Funds Appellate Tribunal and ultimately Section 7- I of the Act gives a clear

provision for filing of the appeal before the Appellate Tribunal. Section 7-I of the Act is quoted as under :

> 7-I. Appeals to Tribunal – (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3) or sub-section (4) of Section 1, or Section 3, or sub-section (1) of Section 7-A, or Section 7-B (except an order rejecting an application for review referred to in sub-section (5) thereof), or Section 7-C, or Section 14B, may prefer an appeal to a Tribunal against such notification or order.
>
> (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.

Section 7-O of the Act deals with deposit of the amount due on filing appeal. It is provided that no appeal by the employer shall be entertained by the Tribunal unless he has deposited with it 75% of the amount due from him as determined by an officer referred to in Section 7-A of the Act. The powers have also been given to the Tribunal regarding reducing or waiving of the amount to be deposited under this section.

9). After examining the scheme of the Act which provides a remedy of review as well as appeal, there can hardly be any doubt to say that the impugned orders of the writ petitions passed under Section 7-A of the Act are appealable orders and the appeals to the Tribunal may be filed under Section 7-I of the Act.

10). Now coming to the question of giving similar relief as has been given in W.P. No. 2331/2004, I am of the opinion that the same cannot be granted to the petitioners. When the petitioners are having a definite remedy of appeal under the scheme of the Act, they cannot be allowed to bypass the said remedy and to file the representations before the authority concerned for reconsideration of the orders passed by it. It is to be kept in mind that there is also a provision of review which I have referred to above and if the petitioners are allowed to file representations, it shall certainly frustrate the aforesaid provisions and the remedy available under the Act. The order passed in W.P. No. 2331/2004 is very clear and this Court has passed the said order for filing a representation in peculiar circumstances. The very first paragraph of the order states as under :

> " It is stated that the petitioner is a contractor who is covered under Employees Provident Fund and Miscellaneous Provisions Act, 1952. Learned counsel for the petitioner submitted that the Employees Provident Fund Account has been seized and the labourers/employees are not being paid their dues, as such they are in great difficulty and they are at the verge of starvation."

It is clear from the said paragraph that the aforesaid order was passed in a circumstance in which the account of the concerned petitioner was reported to have been seized, due to which the labourers/employees were not paid their dues and as such they were in great difficulty and they were at the verge of starvation. It is for this reason alone this Court on the prayer of the counsel for the petitioner without expressing any opinion on the merits of the case, issued a direction for filing of the representation and decision by the competent authority. There is no direction for

consideration on the point of quashment of the order impugned (in the said petition) passed under Section 7-A of the Act. The order is only for consideration about the seizure of the account by the concerned authority and not for any other purpose.

11). The contention of the learned counsel for the petitioners that similar direction may be issued in all the cases is misconceived. In fact, the order passed in W.P. No. 2331/2004 is not a precedent on the point that after passing of an order by the authority under Section 7-A of the Act, there may be a direction for reconsidering the same on a representation being made by the concerned person or the establishment against whom the order is passed. In fact, the aforesaid order even does not utter a single word regarding the remedy against the order passed under Section 7-A of the Act. The order was passed only after a prayer about the seizure of the account was made. This order is applicable for the said case only, which was passed in the peculiar circumstances of the said case alone. Consequently, there is no force in the submissions made by the learned counsel for the petitioners.

12). At this stage, learned counsel for the petitioners submits that as per order passed under Section 7-A of the Act, now the concerned authorities are trying to take coercive steps under Section 8-F of the Act, which they have taken in some cases like W.P. Nos. 4451/2004, 4473/2004 and 4630/2004. They pray that they may be permitted to withdraw this petition with liberty to file appropriate appeal under Section 7-I of the Act. They also pray that some protective order may be passed so that the petitioners may not be subjected to coercive actions before approaching the Appellate Tribunal. In the opinion of this Court, the prayer made by learned counsel for the petitioners seems to be reasonable.

Accordingly, the prayer is allowed. The petitioners are free to file appeal before the Tribunal in accordance with law. However, it is directed that the respondents shall not take any coercive steps against the petitioners regarding recovery of the outstanding amount for a period of 60 days from today. The petitioners may file appeals before the Tribunal during the aforesaid period. The order of interim relief shall loose its efficacy automatically after the lapse of aforesaid period of 60 days from today.

(11). With the aforesaid observations, all the petitions stand disposed of finally.

12). Consequently, all the M.W.Ps. and I.As. pending in each of the writ petition stand disposed of.

Sd/-
Sunil Kumar Sinha
Judge